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8 **United States District Court**
9 **Central District of California**
10 **Western Division**
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12 MICHAEL HYATT,

13 Plaintiff,

14 v.

15 CHEEZY FLICKS
16 ENTERTAINMENT, LLC,

17 Defendants.

CV 15-03541 TJH (AJWx)

18 **Order**
19 **Judgment and**
20 **Permanent Injunction**

21 **JS-6**

22 The Court has considered Plaintiff Michael Hyatt's motion for summary judgment
23 as to damages and other remedies, together with the moving and opposing papers.

24 On May 2, 2016, the Court granted summary judgment in favor of Hyatt, and
25 against Cheezy Flicks Entertainment, LLC ["Cheezy Flicks"], as to liability for Cheezy
26 Flicks' copyright infringement of the film, "The Day of the Triffids" ["the Film"].
27 Hyatt, now, seeks a determination of actual damages, under 17 U.S.C. § 504, in the
28 amount of \$45,494.00.

Under § 504(b), Hyatt may recover, *inter alia*, the actual damages suffered by
him as a result of the infringement. Hyatt must present proof of Cheezy Flicks' gross

1 revenue, after which Cheezy Flicks must prove its deductible expenses and the elements
2 of profit attributable to factors other than the copyrighted work. *See* 17 U.S.C. §
3 504(b). Here, Hyatt has presented Cheezy Flicks' admission that it sold 13,275 copies
4 of the Film with gross sales totaling \$45,494.00. In its opposition, Cheezy Flicks
5 points to its verified interrogatory response which estimated that it incurred \$13,698.00
6 in expenses, with no further detail. This estimation of expenses lacks a foundation and
7 is, therefore, inadmissible. *See S.E.C. v. Phan*, 500 F.3d 895, 913 (9th Cir. 2007).
8 Accordingly, Hyatt is entitled to recover the gross sales amount of \$45,494.00.

9 Hyatt, also, seeks equitable relief enjoining Cheezy Flicks from continuing to
10 infringe the Film's copyright and impounding Cheezy Films' copies of the Film. Under
11 17 U.S.C. § 502, the Court has the authority to permanently enjoin copyright
12 infringement. The facts of this case support the issuance of a permanent injunction.
13 Similarly, there exists a sufficient factual basis under 17 U.S.C. 503(b) to impound all
14 infringing copies of the Film that are in the possession of Cheezy Flicks and its agents.

15 Hyatt, further, requests attorney's fees and costs. In considering whether to
16 award fees under the Copyright Act, the Court considered, *inter alia*, the degree of
17 Hyatt's success; his motivation; the objective reasonableness of the factual and legal
18 arguments; and the need for compensation and deterrence. *See Maljack Prods., Inc.*
19 *v. GoodTimes Home Video Corp.*, 81 F.3d 881, 889 (9th Cir. 1996). The Court
20 considered all the circumstances of this case in light of the Copyright Act's essential
21 goals. *See Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1983 (2016).

22 "[C]opyright law ultimately serves the purpose of enriching the general public
23 through access to creative works, [and] it is peculiarly important that the boundaries of
24 copyright law be demarcated as clearly as possible." *Fogerty v. Fantasy, Inc.*, 510
25 U.S. 517, 527 (1994). Here, Hyatt will receive actual damages and injunctive relief
26 tailored to the infringement of the Film. Hyatt has not suggested how an award of
27 attorney's fees would "serve[] the purpose of enriching the general public through
28 access to creative works," or otherwise serve the purposes of the Copyright Act.

1 *Fogerty*, 510 U.S. at 527. While other cases may present facts that support the award
2 of attorney's fees, this case does not. Here, the facts weigh against an award of
3 attorney's fees.

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5 Accordingly,

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7 **It is Ordered** that Plaintiff's motion for summary judgment as to damages be,
8 and hereby is, **Granted**.

9
10 **It is Further Ordered, Adjudged and Decreed** that Defendant Cheezy Flicks
11 shall pay to Plaintiff actual damages in the amount of \$45,494.00.

12
13 **It is Further Ordered, Adjudged and Decreed** that Defendant Cheezy
14 Flicks, its officers, directors, agents, servants, licensees, partners, affiliates, successors
15 and assigns, and each of their respective officers, directors, agents, servants,
16 employees, partners, representatives, and all others acting directly or indirectly in
17 concert or participation with Defendant or with any of the foregoing be, and hereby are,
18 **Permanently Enjoined** from:

- 19 1. Infringing any of Plaintiff's exclusive rights to reproduce or distribute
20 copies of the Film in any format and through any distribution channel, including, but
21 not limited to, Defendant's website, through other distributors, and retail stores; and
22 2. Advertising, marketing, selling, offering for sale, licensing, or distributing
23 the Film in any media or format.

24
25 **It is Further Ordered, Adjudged and Decreed** that all copies of the Film,
26 including, but not limited to, DVDs, masters, copies, negatives and tapes, as well as
27 all artwork, packaging, advertising and marketing materials related to the Film in
28 Defendant's possession shall be delivered, within thirty (30) days of the date of this

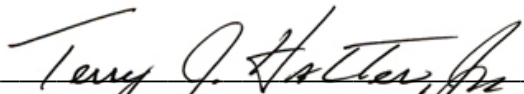
1 order, to Plaintiff's counsel at the following address:

2
3 Michael R. Blaha

4 2530 Wilshire Boulevard, Third Floor

5 Santa Monica, California 90403

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7 Date: November 18, 2016

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9 Terry J. Hatter, Jr.
10 Senior United States District Judge
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